UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

NATHAN BANE, Plaintiff, v. GNC, INC., Defendant.	Case No. __________ JURY TRIAL DEMANDED

COMPLAINT

NOW COMES Plaintiff, Nathan Bane, by and through his attorney, Kayla Drum, Esquire, and files this Complaint alleging as follows:

I. Nature of the Action

1. Plaintiff brings this Complaint to recover damages under the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. §§2611-2619. Plaintiff took FMLA for the birth of his child. Plaintiff was terminated in retaliation for taking FMLA leave.

II. Jurisdiction and Venue

2. This action arises under FMLA, 29 U.S.C. §§2611-2619. This Court has jurisdiction over Plaintiff's discrimination claims pursuant to 28 U.S.C. § 1331.

3. Plaintiff is a resident and citizen of Pennsylvania, a substantial part of the events or omissions giving rise to the claims occurred in Western Pennsylvania, and, therefore, this action is within the jurisdiction of the United States District Court for the Western District of Pennsylvania and the venue is proper pursuant to 28 U.S.C. § 1391(b).

III. Parties

4. Plaintiff, Nathan Bane ("Plaintiff"), is an adult individual residing at 125 Orchard Street, Beaver Falls, Pennsylvania 15010.

5. Defendant, GNC, Inc. ("Defendant"), is a business with a location at Avenue B Ferry Street, Building 8, Leetsdale, PA 15065.

IV. Facts

6. Plaintiff became employed with the Defendant in June 2012 in Defendant's Luckyvitamin.com division.

7. Plaintiff worked as a merchandise processor.

8. Plaintiff had an excellent work history with Defendant until his termination.

9. Plaintiff's wife, Cassie Bane, also worked for Defendant.

10. In late January 2016 Mrs. Bane informed their supervisors, Rick Koritsky and Carlton McKenzie that she was pregnant.

11. In March 2016 Mr. and Mrs. Bane were approved for FMLA for when the baby was born.

12. Two weeks prior to Mrs. Bane's maternity leave, Mr. Mckenzie informed Mr. and Mrs. Bane that they could no longer work the same shift as no one related or married was permitted to do so.

  a. At the time, Mr. and Mrs. Bane were on mandatory fifty to seventy hour work weeks.
  b. The policy only applied to Mr. and Mrs. Bane, though they did not complain out of fear of retaliation.
  c. Another mother and daughter who work the same shift in different departments, the same as Mr. Bane and his wife, were permitted to continue to do so.

13. It was known that Mr. and Mrs. Bane would be using FMLA time when the baby was born.

14. Mr. Bane was approved for FMLA from July 14, 2016 to October 6, 2016.

15. Plaintiff's child was born on July 16, 2016.

16. Plaintiff informed his supervisor's that he would be out at least for the first one to two weeks of his FMLA after the baby was born.

17. Mr. and Mrs. Bane were required to call in two hours after to the start of their regular shifts if they chose to be off using FMLA time.

18. On July 20th, 2016, four days after the birth of his child, Plaintiff called in to use FMLA time at 7:20am and spoke to Mr. Koritsky.

a. Plaintiff's shift began at 5:00am.

19. On July 21, 2016 Plaintiff received a phone call from Mr. McKenzie and Ms. Mulholland in Human Resources terminating his employment stating he was a no call/no show on July 20, 2016.

a. They further stated this absence put him over forty points, as Defendant uses a point based attendance system.

b. Plaintiff's absence on July 20, 2016 netted him twenty points, which placed him over forty, despite calling off a few minutes late and everyone being aware previously that he would be off on FMLA that entire week.

c. There is progressive discipline for Defendant's employees regarding attendance and points including a written warning, final warning, then termination.

i. Plaintiff never received a final warning and should not have been given points when his time was protected under medical leave.

20. Plaintiff was terminated in retaliation for taking FMLA leave.

V. Allegations

Count I
Retaliation in Violation of FMLA

21. The preceding paragraphs are incorporated herein as if set forth at length.

22. Plaintiff went on FMLA leave on July 16, 2016, it was approved through October 3, 2016.

23. After applying for FMLA, Plaintiff and his wife were told they could no longer work the same shift when other related individuals were permitted to do so.

24. On July 20, 2016, four days after the birth of his child, Plaintiff was late calling off.

25. On July 21, 2016 Plaintiff was terminated for being a no call/no show.

26. Plaintiff was terminated in retaliation for taking FMLA leave.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against the Defendant for the following:

a. Loss of income of back wages;

b. Loss of income of front wages:

c. Additional punitive damages;

d. Plaintiff’s legal fees;

e. Pre-judgment and continuing interest;

f. Court costs; and

g. Other such relief as the Court may deem just and proper.

/s/ Kayla Drum
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